IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5180 OF 2007

Ramdas Laxman Gadhave and ors. ...Petitioners

v/s

The Pimpri-Chinchwad Municipal Corporation and ors. ...Respondents

Mr S.M. Gorwadkar for Petitioners.

Mr N.V. Walawalkar i/b Mr Sudhir Prabhu for Respondent No.1.

Mr V.P. Malvankar for Respondent Nos.2 to 5.

CORAM : D.K. DESHMUKH AND V.M. KANADE JJ.

DATE : 11TH DECEMBER 2007.

P.C. :-

1. The petitioners who claim to be residents of survey Nos.198 and 211 of Mouje Bhosari, Taluka Haveli, District Pune, by this petition challenge the Notification dated 23rd February 2006 published in the Official Gazette dated 2nd March 2006 under section 126 of the Maharashtra Regional Town Planning Act 1966. Perusal of the Notification, which is under challenge in this petition, shows that that Notification has been issued by the State Government because of the request received from he respondent No.1 - Municipal Corporation for acquisition of the lands mentioned in that Notification under the provisions of the Land Acquisition Act. As per that Notification, these lands have been shown as reserved for widening of the road in the sanctioned development plan of town Pimpri Chinchwad. The development plan in which these lands are shown as reserved for road widening is sanctioned in November 1995. It appears that the petitioners had structures on these lands. The Corporation issued notices under the Town Planning Act for demolition of those structures as they were unauthorised structures. Civil suit was filed challenging those notices and an order of temporary injunction was obtained. It appears

that thereafter the Corporation was moved for initiating proposal for modification in the development plan so that for widening of the road, the acquisition of these lands is not necessary. In the meantime, on 2nd March 2006, Notification under section 126 of the M.R.T.P. Act was issued, but that Notification was not challenged. The proceedings arising out of application for temporary injunction made in the civil suit came before this Court in writ petition Nos.7799 of 2006 and 7802 of 2006. Perusal of the order dated 2nd March 2006 passed in those writ petitions shows that the writ petitions and the civil suits were withdrawn with liberty (i) to pursue the proceedings for modification of the development plan and (ii) to challenge the Notification under section 126 of the M.R.T.P. Act. So far as the proceedings initiated for modification in the development plan is concerned, as per the averments in the petitions, in the meeting held with the Chief Minister, the proposal for modification in the development plan was rejected by the State Government, but as per the petitioners' version, acquisition of the lands was to be taken up after rehabilitating the occupants. As per the affidavit filed by the Corporation, the State Government has not imposed any condition regarding rehabilitation but the petitioners and the Corporation both accept the position that the State Government has not accepted the proposal for

modification of the development plan.

2. Perusal of this petition shows that the challenge to the Notification under section 126 is mainly on the ground that modification in the development plan is necessary. It is common ground that the development plan was sanctioned by the State Government in the year 1995. According to the provisions of the said Act, objections are required to be invited after communication of the draft development plan and it is only after considering the objections, draft development plan is finalised. It is nobody's case that the petitions had raised any objection to the reservation of the lands in question for road widening in the development plan. There was a proposal submitted for modification in the development plan but as observed above, that proposal has been rejected by the State Government. In this petition, there is no challenge to the rejection of the proposal for modification of the development plan. Thus, the position as it stands today is that the development plan stands as it is and according to that development plan, the lands are shown reserved for widening of the road. The Notification under section 126 has been issued for acquisition of the lands for that purpose under the Land Acquisition Act. In the petition, we do not see any worthwhile challenge raised to the validity of the Notification issued under

section 126 of the Land Acquisition Act. Before us, it was not disputed that the Notification issued under section 126 is in consonance with and for implementation of the sanctioned development plan. there is no challenge before us raised to the sanctioned development plan. Obviously therefore, without challenging the development plan, merely the Notification issued for implementation of that development plan cannot be challenged. As observed above, the development plan was sanctioned in the year 1995, that plan showed that these lands are reserved for widening of the road, but the petitioners never raised any challenge to that reservation. A proposal was submitted to the Corporation for minor modification in the development plan only after notices of demolition of unauthorised structures were issued. Even that proposal for modification has not been accepted by the State Government admittedly and therefore, now there can be no challenge to the Notification issued under section 126. As observed above, the Notification under section 126 was published in the Official Gazette in the month of March 2006. this petition is filed in the month of July 2007 and there is no explanation given why this Court was not moved earlier challenging the Notification under section 126. The civil suits were withdrawn in the month of March 2007 by the order passed in March 2007. In the writ petitions filed by the petitioners, the

Corporation was directed not to demolish the structures till 30th June 2007. After March 2007 till July 2007, no steps were taken to challenge the Notification issued under section 126 of the Land Acquisition Act. Taking overall view of the matter therefore, in our opinion, there is no substance in the petition, it is liable to be rejected. It is accordingly rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary of the Court.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(V.M. KANADE J.)